TENANCY IN COMMON—PURCHASE OF AN OUTSTANDING TITLE BY ONE OF THE CO-TENANTS.—A, B, C, and D were in possession of Blackacre under a void tax deed. D bought in the outstanding title in fee from X. *Held*, that upon contribution by the other co-tenants that the title of D would inure to the benefit of all. *James* v. *James* (W. Va. 1915), 87 S. E. 364.

The rule is frequently laid down that "one co-tenant cannot purchase an outstanding title or incumbrance affecting the common estate for his own exclusive benefit * * *; but such purchase will inure to the benefit of all." 17 AM. & ENG. ENCYC. OF LAW, 674; *Turner* v. *Sawyer*, 150 U. S. 578; *Onley* v. *Sawyer*, 54 Cal. 379; *Titsworth* v. *Stout*, 49 Ill. 78, 95 Am. Dec. 577; *Bracken* v. *Cooper*, 80 Ill. 221; *Holterhoff* v. *Mead*, 36 Minn. 42; *Jones* v. *Stanton*, 11 Mo. 433; *Brown* v. *Homan*, 1 Neb. 448; *Boskowitz* v. *Davis*, 12 Nev. 446; *Van Horn* v. *Fonda*, 5 Johns. Ch. (N. Y.) 388; *Dray* v. *Dray*, 21 Ore. 59. But in *Roberts* v. *Thorn*, 25 Tex. 728, 78 Am. Dec. 552; *King* v. *Rowan*, 10 Heisk. (Tenn.) 675; *Frentz* v. *Klotch*, 28 Wis. 312, the contrary doctrine was announced; these three cases may possibly be distinguished from the former in that the co-tenants therein took by different instruments, but this distinction in the facts should bear little weight because the parties in all cases were co-tenants to the same extent. The rule in England seems to be exactly *contra* to the principal case. *Kennedy* v. *De Tafford* [1897], A. C. 180, was a case in which one of the co-tenants purchased an outstanding mortgage on the premises held in co-tenancy. It was held that there was no such confidential relation existing between the parties as would require the title acquired to be held in trust for all the co-tenants. *Blodgett* v. *Hildreth*, 8 Allen (Mass.), 186, is in accord with the English view on a similar state of facts.

WATERS—ALIENATION OF RIPARIAN RIGHTS.—Plaintiff's lot abutted on a bay, but by a deed in the line of title the riparian rights appurtenant to the lot were reserved by the grantor. Plaintiff tried to enjoin defendant from erecting a wharf in the bay in front of her lot, contending that it violated her riparian rights. *Held*, that plaintiff could not maintain the action, as the riparian rights had been separated from her lot by the deed mentioned. *Gibson* v. *Carroll* (Tex. Civ. App. 1915), 180 S. W. 630.

The cases on the separation of riparian rights from the upland are not harmonious. It is uniformly recognized that the land under the water, if it is in private ownership, may be separated from the upland. *Smith* v. *Ford*, 48 Wis. 115, 164; *People ex rel.* v. *Board of Supervisors*, 125 Ill. 1, 23; *Dunlop* v. *Stetson*, 4 Mason, 349; *Den* v. *Wright*, 1 Peters C. C., 64. When such a separation has taken place the result upon the riparian rights which were incident to the upland is not clear. Generally speaking, those rights which partially depend upon the possession or ownership of the soil upon which the water rests are separable from the upland. The right to construct wharves or other structures in the water (*Simons* v. *French*, 25 Conn. 346; *Goodsell* v. *Lawson*, 42 Md. 348, 372; *Hastings* v. *Grimshaw*, 153 Mass. 497), the right to catch fish by fixtures annexed to the soil (*Matthews* v. *Treat*, 75 Me. 594), and the right to use the water as it flows in the stream for

the development of power (*Winchell* v. *Clark*, 68 Mich. 64; *Bardwell* v. *Ames*, 22 Pick. (Mass.) 333), are all examples of such riparian rights as can be alienated separately from the upland. On the other hand, those riparian rights which depend upon the fact that the land to which they are incident touches the water cannot be separated from the upland. The right to alluvium (*Railroad* v. *Platt*, 52 Ohio St. 257) and the right to gather seaweed from the beach (*Phillips* v. *Rhodes*, 7 Met. (Mass.) 322) have been held to be inseparably incident to the mainland. Under this head comes the right to use the water for various purposes on the adjoining land. As a general rule, this use must be incident to the riparian land, and it cannot be transferred to one who is not a riparian owner if the rights of other riparian proprietors will be prejudiced. *Stockport Waterworks Co.* v. *Potter*, 3 Hurlst. & C. 300; *Gould* v. *Eaton* 117 Cal. 539; *Higgins* v. *Flemington Water Co.*, 36 N. J. L. 538.

WATERS—INTERFERENCE WITH RIGHT TO FORD.—Plaintiffs' farm was crossed by a river, and at a shallow place they had established a ford from one part of their farm to the other. Defendant company maintained a power house on the river above the plaintiffs' farm; and, by changing the arrangement of its water gates, doubled, at certain periods, the amount of water in the stream. At these high-water periods plaintiffs' ford was impassable and plaintiffs sued for this injury. *Held*, that plaintiffs should recover. *Fewell* v. *Catawba Power Co.* (S. C. 1915), 86 S. E. 947.

These facts present an unusual situation, as a lower proprietor is complaining of the act of an upper owner in raising the level of the stream. The owner of land through which a stream flows may increase the volume of water by draining into it without any liability in damages to a lower owner. *Miller* v. *Laubach*, 47 Pa. St. 154; *McCormick* v. *Horan*, 81 N. Y. 86. This right is subject to the qualification that an owner cannot by artificial means collect surface waters and discharge them into the stream beyond its natural capacity to the damage of lower owners. *Noonan* v. *City of Albany*, 79 N. Y. 470; *Jackman* v. *Arlington Mills*, 137 Mass. 277; *Mayor of Baltimore* v. *Appold*, 42 Md. 442. However, this analogy will not justify the act of the defendant in the principal case, as the stream was not increased in the exercise of the right of drainage. The defendant's position is more nearly that of one who sets back-water on an upper proprietor by means of a dam. It seems to be well established that a riparian proprietor has no right to throw water back upon the upper proprietor. *Chapman* v. *Thames Mfg. Co.*, 13 Conn. 269; *Heath* v. *Williams*, 25 Me. 209; *Casebeer* v. *Mowry*, 55 Pa. St. 419; *Pixley* v. *Clark*, 35 N. Y. 520; *Rhodes* v. *Whitehead*, 27 Tex. 304; *Treat* v. *Bates*, 27 Mich. 390. It is not necessary that land be overflowed or a nuisance created or any appreciable damage committed, but a cause of action arises as soon as the water is raised above its ordinary level on the land of the upper proprietor, even though the stream does not go above its banks. *Amoskeag Co.* v. *Goodale*, 46 N. H. 53; *Graver* v. *Sholl*, 42 Pa. St. 58; *Stout* v. *McAdams*, 3 Ill. 67; *Wright* v. *Moore*, 38 Ala. 593; *Ripka* v. *Sergeant*, 7 Watts & Serg. (Pa.) 9; *Cory* v. *Silcox*, 6 Ind. 39; see